

[fol. 1133]

## Question 2

"Which do you think are the most important factors (in order of importance) responsible for this change?"

(Analyzed by those retailers whose dollar sales in October were *lower* than those in September.)

Factors	Retailers					
	First		Second		Third	
	#	%	#	%	#	%
Color television	37	23.7	47	30.1	16	10.2
Regulation W	79	50.6	35	22.4	11	7.0
Excise tax	7	4.5	17	10.9	17	10.9
Set shortage	13	8.3	10	6.4	10	6.4
War scare	3	1.9	6	3.9	2	1.3
Higher price	3	1.9	5	3.2	7	4.5
Premature buying	7	4.5			2	1.3
Business conditions	5	3.2	4	2.6	5	3.2
Less expensive sets					1	.7
All others	1	.7	5	3.2	2	1.3
No answer	1	.7	27	17.3	83	53.2
Total	156	100.0%	156	100.0%	156	100.0%

[fol. 1134]

## Question 2

"Which do you think are the three most important factors (in order of importance) responsible for this change?"

(Analyzed by those wholesalers whose dollar sales in October were *lower* than in September.)

Factors	(Base = 8 Wholesalers)		
	First	Second	Third
Shortage	5	1	
Regulation W	1		2
Excise tax			
Color television	1	2	
Premature buying	1		
Total	8	3	2

[fol. 1135]

## Question 3

"Were your October sales in line with your expectations?"

	Retailers		Wholesalers	
	#	%	#	%
Yes	366	57.3	42	65.6
No	270	42.2	22	34.4
No answer	3	.5		
Total	639	100.0%	64	100.0%

[fol. 1136]

## Question 3

"Were your October sales in line with your expectations?"

(Analyzed by those respondents who indicated that October sales were *not* in line with their expectations.)

	Retailers		Wholesalers	
	#	%	#	%
Above expectations.....	131	48.5	16	72.7
Below expectations.....	139	51.5	6	27.3
No answer.....				
Total.....	270	100.0%	22	100.0%

[fol. 1137]

## Question 3

"Were your October sales in line with your expectations?"

(Analyzed by the reasons given by retailers who indicated that October sales were *not* in line with their expectations.)

Reasons	Retailers	
	#	%
Above expectations.....	131	100.0
Excise tax.....	96	73.3
Advertising.....	4	3.1
War scare.....	9	6.9
Premature buying.....	4	3.1
Regulation W.....	12	9.2
Co-axial cables.....	3	2.3
Business conditions.....	3	2.3
Increased interest in TV.....	4	3.1
Seasonal.....	3	2.3
Shortage.....	21	16.0
All other.....	17	13.0
No answer.....	4	3.1
Below expectations.....	139	100.0
Color television.....	64	46.0
Regulation W.....	78	56.1
War scare.....	5	3.6
Shortage.....	23	16.5
Excise tax.....	14	10.1
Higher price.....	9	6.5
Seasonal.....	3	2.2
All other.....	9	6.5
No answer.....	12	8.6

Note: A number of respondents gave more than one reason.

[fol. 1138]

## Question 3

"Were your October sales in line with your expectations?"

(Analyzed by the reasons given by wholesalers who indicated that October sales were *not* in line with their expectations.)

Reasons	Number of Wholesalers
Above expectations.....	16
Excise tax.....	8
Increased delivery.....	2
Advertising.....	2
Demand for popular priced lines.....	1
Regulation W.....	1
Increased production.....	1
Business conditions.....	1
Seasonal.....	1
No answer.....	4
Below expectations.....	6
Color television.....	3
Regulation W.....	2
No answer.....	2

Note: A number of respondents gave more than one reason.

[fol. 1139]

## Question 4

"Are your sales up to today in November excellent, good, fair, or poor?"

	Retailers		Wholesalers	
	#	%	#	%
Excellent.....	14	2.2	14	21.9
Good.....	95	14.9	17	26.5
Fair.....	223	34.9	17	26.6
Poor.....	302	47.2	11	17.2
No answer.....	5	.8	5	7.8
Total.....	639	100.0%	64	100.0%

[fol. 1140]

## Question 4

"Are your sales up to today in November excellent, good, fair, or poor?"

(Analyzed by reasons retailers gave for the condition of their sales in November.)

Reasons	Excellent (14=100%)		Good (95=100%)		Fair (223=100%)		Poor (302=100%)	
	#	%	#	%	#	%	#	%
Excise tax	2	14.3%	13	13.7%	115	51.6%	155	51.3%
Regulation W	2	14.3	7	7.4	72	32.3	109	36.1
Premature buying			2	2.1	14	6.3	34	11.3
Price increases			3	3.2	7	3.1	15	5.0
Color television			4	4.2	42	18.8	50	16.6
Shortage of sets	2	14.3	5	5.3	13	5.8	11	3.6
Business conditions	1	7.1	3	3.2	1	0.4	14	4.6
Scare and novelty buying over					10	4.5	16	5.3
Tax free sets on hand	3	21.4	17	17.9			1	0.3
Seasonal Buying	2	14.3	9	9.5	4	1.8	3	1.0
War scare	2	14.3	1	1.1	4	1.8	5	1.7
Advertising	2	14.3	6	6.3	2	0.9	2	0.7
Interest in television			6	6.3	2	0.9		
Demand			8	8.4				
Public confusion					4	1.8	3	1.0
Election					4	1.8	3	1.0
First-of-month sales slow					4	1.8	2	0.7
More sets available			6	6.3				
Other	1	7.1	1	1.1	4	1.8	5	1.7
No answer	1	7.1	22	23.2	30	13.5	27	8.9

[fol. 1141]

## Question 4

"Are your sales up to today in November excellent, good, fair, or poor?"

(Analyzed by reasons wholesalers gave for the condition of their sales in November.)

Reasons (Number of respondents)	Excellent (14)	Good (17)	Fair (17)	Poor (11)
Excise tax		5	11	8
Regulation W			6	3
Color television			3	3
Premature buying	1	2	1	2
Increased demand	2	2		
Tax free sets on hand	2	1		
Increased production	1	1		
Good delivery	2	1		
Better programs	1	1		
Quality of product	2			
All other	1	8	2	2
No answer	3	2	2	

Note: A number of respondents gave more than one reason.



[fol. 1142]

## Question 5

"Have cancellations of orders by your customers, if any, over the last two weeks been normal, high, or low?"

	Retailers		Wholesalers	
	#	%	#	%
Normal.....	342	53.5	39	60.9
High.....	46	7.2	4	6.3
Low.....	81	12.7	7	10.9
No cancellations (volunteered).....	142	22.2	14	21.9
No orders taken.....	16	2.5		
No answer.....	12	1.9		
Total.....	639	100.0%	64	100.0%

[fol. 1143]

## Question 5

"Have cancellations by your customers, if any, over the last two weeks been normal, high, or low?"

(Analyzed by the reasons given by retailers who indicated that cancellations by customers had been high or low over the last two weeks.)

Reasons	Retailers	
	#	%
High cancellations.....	46	100.0
Regulation W.....	13	32.6
Color TV.....	14	30.4
Tax.....	11	23.9
Shortage of sets.....	10	21.7
Business conditions.....	2	4.3
Premature buying.....	1	2.2
Other.....	10	21.7
Low cancellations.....	81	100.0
Few advance orders.....	13	16.0
Service and delivery.....	13	16.0
Sales promotion and advertising.....	8	9.9
Demand.....	7	8.6
Tax.....	5	6.2
Buyers decision made.....	4	4.9
Sells to upper class.....	4	4.9
Fears of shortage.....	3	3.7
Other.....	10	12.3
No answer.....	22	27.2

[fol. 1144]

## Question 5

"Have cancellations by your customers, if any, over the last two weeks been normal, high, or low?"

(Analyzed by the reasons given by wholesalers who indicated that cancellations by customers had been high or low over the last two weeks.)

Reasons	Number of Wholesalers
High cancellations	4
Color television	1
Excise tax	3
Regulation W	1
War scare	1
Low cancellations	7
Not felt at wholesale level	1
Backlog of orders on popular-priced sets	1
Dealers don't want to stock	1
Allocate sets	1
Tax free sets on hand	1
Excise tax	1
No answer	1

Note: A number of respondents gave more than one reason.

[fol. 1145]

## Question 6

"As of today are any of the following factors unfavorably affecting your sales: shortages of sets, color, Regulation W, new excise tax?"

	Retailers		Wholesalers	
	#	%	#	%
Yes	601	94.0	60	93.7
No	30	4.7	4	6.3
No answer	8	1.3	..	.....
Total	639	100.0%	64	100.0%

[fol. 1146]

## Question 6

"As of today, are any of the following factors unfavorably affecting your sales: shortages of sets, color, Regulation W, new excise tax?"  
 (Analyzed by the 601 retailers who indicated, in the order of their importance, that any one of these items was affecting their sales unfavorably.)

	Total		1		2		3		4		Doesn't Affect	
	#	%	#	%	#	%	#	%	#	%	#	%
Shortage of sets	601	100	78	13.0	70	11.7	79	13.1	97	16.1	277	46.1
Color	601	100	92	15.3	114	19.0	146	24.3	57	9.5	192	31.9
Regulation W	601	100	204	33.9	155	25.8	72	12.0	31	5.2	139	23.1
Excise tax	601	100	227	37.8	194	32.3	77	12.8	8	1.3	95	15.8

[fol. 1147]

## Question 6

"As of today, are any of the following factors unfavorably affecting your sales: shortages of sets, color, Regulation W, new excise tax?"  
 (Analyzed by the 60 wholesalers who indicated, in the order of their importance, that any one of these items was affecting their sales unfavorably.)

	Total		1		2		3		4		Doesn't Affect	
	#	%	#	%	#	%	#	%	#	%	#	%
Regulation W	60	100	26	43.3	14	23.3	7	11.7	1	1.7	12	20.0
Excise tax	60	100	20	33.3	20	33.3	5	8.3	1	1.7	14	23.4
Shortage of sets	60	100	10	16.7	4	6.6	11	18.3	4	6.7	31	51.7
Color	60	100	4	6.7	10	16.7	13	21.6	10	16.7	23	38.3

[fol. 1148]

Brands of Television Sets Carried

Brand	Retailers (639=100%)		Wholesalers (64=100%)	
	#	%	#	%
Admiral	354	55.4	6	9.4
Crosley	152	23.8	5	7.8
Dumont	144	22.5	7	10.9
Emerson	179	28.0	5	7.8
G. E.	257	40.2	4	6.2
Hallicrafter	98	15.3	4	6.2
Hoffman	50	7.8	2	3.1
Motorola	303	47.4	5	7.8
Philco	340	53.2	7	10.9
RCA	427	66.8	6	9.4
Zenith	276	43.2	4	6.2
All others	312	48.8	12	18.5
No answer	16	2.5		

Note: Some wholesalers and most retailers carried more than one brand.

[fol. 1149] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF EARL W. MUNTZ—Filed November 13, 1950.

COUNTY OF COOK,

State of Illinois, ss:

EARL W. MUNTZ, being duly sworn, deposes and says:

1. I am the Vice-President of Muntz TV Inc. a manufacturer of television sets, with principal offices at 3150 Lincoln Avenue, Chicago, Illinois.

Muntz TV, Inc. has followed with great interest the FCC color decision of October 10, 1950. Muntz TV, Inc. has developed and is going to manufacture and market a "Color Companion," a television receiver which will receive color telecasting on the new FCC-approved standards. This "Color Companion" is being engineered to integrate with any color television system.

Muntz TV, Inc. is receiving orders on its "Color Companion" at the present time. Production of 20 units has already been begun and it is expected that that rate will accelerate as the public demand for color increases.

2. The FCC color television announcement on October 10, 1950 has had no substantial effect whatsoever on the sale of black and white television receivers manufactured by Muntz TV, Inc.



On October 27, 1950, Muntz TV, Inc. ran full-page newspaper advertisements headlining the words "Color Is Here" in all of the major New York and (*other cities*) newspapers (see attached copy of advertisement). As a direct result of that advertising campaign, Muntz TV sales doubled or tripled in the days immediately following the [fol. 1150] appearance of the advertisements. The clear indication is that the public, reassured that any set which it buys today will be able to receive color on the CBS system whenever its favorite programs are telecast in color, will continue to buy the present black and white receivers without fear,

Sales for the past four weeks are as follows:

Period	Units Sold
Week ending Oct. 7	1553
Week ending Oct. 14	2304
Week ending Oct. 21	2417
Week ending Oct. 28	4914

It is of significance that Muntz TV sales of black and white receivers have been unaffected by the FCC color announcement thus far, particularly since our advertising expenditures have been more or less uniform throughout the period of the last four weeks.

Earl W. Muntz.

Sworn to before me this 8th day of November, 1950.  
Elyse Endt. (Seal.)

(Here follows 1 photolithograph, side folio 1151)



## An open letter to all MUNTZ TV owners (present and future:)

If the current controversy over color television has created a doubt in your mind, dismiss it immediately!! As a Muntz TV owner, present or future, you can relax in the comforting knowledge that your present set is ready...on a moment's notice... for low-cost application of the FCC-approved CBS color system. PRODUCTION ACTIVITY ON THE NEW MUNTZ COLOR UNIT HAS ALREADY BEGUN!

Muntz TV, Inc., is not primarily concerned about the debate now raging as to the merit of one system over another...except to recognize the stark fact that Color has been approved; that the FCC saw fit to authorize the CBS system; and that Muntz' responsibility in the matter lies in providing all Muntz TV owners with low-cost Color reception as quickly as possible, no matter the system chosen.

THE IMPORTANT THING TO REMEMBER IS THIS: Your Muntz TV was (and is being) engineered to integrate with any system...and to protect your investment and television satisfaction against any or all color contingencies.

Anticipating the advent of color, Muntz TV receivers were designed so that a simple Color "jack" is all that is necessary to equip your present set for tandem Muntz Color reception. The enormous Factory Service Operation of Muntz TV, Inc., is geared to thus prepare your set AT NO COST WHATSOEVER the moment you decide to buy a Muntz "Color Companion" unit.

Not an adapter or converter...not a gadget or unwieldy attachment...the new Muntz "Color Companion" is a full sized, full screen Color Receiver to match your present Black-and-White console or to "base" your present table model. It will reflect the same calibre performance, high styling and low "Muntz To You" cost that has so successfully characterized Muntz TV since its inception.

Orders for the new Muntz "Color Companion" are being accepted at Muntz "Direct" offices throughout America on a first-come, first-served basis. If you now own a Muntz TV, be among the first to add and enjoy Muntz Color reception. If you do not own a TV receiver now, call now for a demonstration in your home within the hour. There is not the slightest cost or obligation.

\*

color  
color  
color  
is  
HERE  
coming

Orders for the new Muntz "Color Companion" are being accepted at Muntz "Direct" offices throughout America on a first-come, first-served basis. If you now own a Muntz TV, be among the first to add and enjoy Muntz Color reception. If you do not own a TV receiver now, call now for a demonstration in your home within the hour. There is not the slightest cost or obligation.

\*



For your free demonstration call

Illinois 8-6000  
IN JERSEY  
Market 3-1967

coming  
with  
Muntz TV

79-89 NORTHERN BLVD. • JACKSON HEIGHTS, L.I.  
817 FULTON ST. • Opposite FOX THEATRE, B'KLYN

89-42 MYRTLE AVE. • RIDGEWOOD, B'KLYN  
965 BROAD ST. • NEWARK, N. J.



[fol. 1152] And afterwards on, to wit, the 14th day of February, 1951, nunc pro tunc, November 13, 1950, came the Defendant, F.C.C., by its attorneys and filed in the Clerk's office of said Court its certain Response To Subpoena Duces Tecum and Motion to Quash in words and figures following, to wit:

[fol. 1153] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE TO SUBPOENA DUCES TECUM AND MOTION TO  
QUASH

Now comes the Federal Communications Commission, defendant in the above-entitled action and in response to a subpoena duces tecum, issued on November 8, 1950 at the behest of the Pilot Radio Corporation, an applicant for intervention as plaintiff, directing the Commission to produce copies of all letters, correspondence and telegrams between the Commission and United States Senator Edwin C. Johnson relating to the subject of color television, states as follows:

(1) Pilot Radio Corporation who has requested the subpoena in question is not a party to this action but merely a petitioner whose request to intervene in the action has not as yet been acted upon. Nor was Pilot a party to the proceedings before the Commission which led to the adoption of the Color Television Order in issue in this case, although it had full opportunity to participate in these proceedings and was on notice to that effect. As more fully set forth in the Commission's brief in opposition to the motion for preliminary injunction at pages 69-73, Pilot is, in any event, completely lacking in standing to complain of the Commission's Order and its petition to intervene in this proceeding must be dismissed for want of jurisdiction.

(2) The request that the Commission bring before this Court all copies of letters, correspondence and telegrams relating to the subject of color television between Senator Johnson and the Commission or any of the individual Commissioners is clearly not filed in good faith or in an effort to aid the Court in the disposition of the real issues in the [fol. 1154] case. The subpoena obviously has been filed for the purposes of publicity and in the hopes of creating by innuendo a completely false suggestion of improper pressure. Pilot has not and could not have adduced any evi-

dence whatsoever showing that the Commission's decision is, in fact, the result of prejudice or of any improper pressure on the part of Senator Johnson or any other person or organization, or that the correspondence between Senator Johnson and the Commission relating to color television, almost all of which has been already made public and given full coverage in the trade press, is in any way improper or prejudicial. It has not made any such allegation in its Motion to Intervene As Plaintiff in this proceeding.

(3) The Commission's decision, which is challenged in this proceeding, is made on the basis of a full administrative hearing, the record of which is before this Court. A trial *de novo* for the purpose of hearing any other testimony would be both improper and unnecessary. The issues presented for determination by this Court, whose inquiry is limited to review of evidence of record before the Commission, may be finally resolved on the motions to dismiss or for summary judgment. See *Columbia Broadcasting Co., Inc. v. United States*; 316 U. S. 407. Where the record of the proceedings before the Commission supports its conclusions the court cannot go behind the record and probe into the mental processes by which the Commissioners arrived at their determination. *U. S. v Morgan*, 313 U. S. 409, 421-22; *Chicago B & Q Ry. Co. v. Babcock*, 204 U. S. 585, 593.

(4) In order to dispel any conceivable idea that anything improper is contained in the correspondence between Senator Johnson and the Federal Communications Commission, there will be produced in Court true copies of all such letters, correspondence and telegrams which the Commission has been able to find in its files or any of the files of the individual Commissioners within the short period of time available since receipt of the subpoena. It is respectfully submitted, however, that there is no basis whatsoever for the subpoena herein requested, and that it should [fol. 1155] be quashed and these documents should not be made part of the record in this proceeding.

Federal Communications Commission, Benedict P. Cottone, General Counsel; Max Goldman, Assistant General Counsel.

[fol. 1156] Acknowledgement of Service

Service of the foregoing "Response to Subpoena Duces Tecum and Motion to Quash" is hereby acknowledged and

a true copy thereof received this day of November, 1950.

Radio Corporation of America, National Broadcasting Company, Inc., RCA Victor Distributing Corporation, Plaintiff; by Kirkland, Fleming, Green, Martin & Ellis, 33 N. LaSalle Street, Chicago 2, Illinois, Counsel for Plaintiffs; Pilot Radio Corporation, Applicant for Intervention; by Schapiro & Schiff, 38 S. Dearborn Street, Chicago, Illinois, Counsel for Applicant for Intervention.

[fol. 1157] And *on*, on the same day, to wit, the 14th day of February, 1951, nunc pro tunc, November 13, 1950, there was filed in the Clerk's office of said Court a certain Affidavit Of Max Goldman, in words and figures following, to wit:

[fol. 1158] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF MAX GOLDMAN

STATE OF ILLINOIS,

Cook County, ss:

Max Goldman, being duly sworn, deposes and says:

1. I am Assistant General Counsel in charge of Litigation and Administration, Office of the General Counsel, Federal Communications Commission (hereinafter called "the Commission"), one of the defendants herein, and as such, I am familiar with the proceedings held before the Commission relating to the adoption of standards for commercial color television broadcasting.

2. I have read the complaint, the Government's motions to dismiss the complaint, or in the alternative for summary judgment, the Affidavit of Benedict P. Cottone, dated October 27, 1950, in support of said motions, and I am familiar with the facts stated in that affidavit.

3. This affidavit is made in opposition to plaintiff's motion for a temporary restraining order and a temporary or interlocutory injunction restraining, enjoining, and suspending the promulgation, operation and execution of the Commission's Order adopted October 10, 1950, effective November 20, 1950, promulgating standards for the commercial broadcasting of color television. This affidavit is also made in support of the Government's motions to dismiss



the complaint, or in the alternative for summary judgment.

[fol. 1159] I. *Analysis of Affidavit of C. B. Jolliffe*

4. I have read the affidavit of C. B. Jolliffe, dated November 8, 1950, in support of plaintiffs' motion for a temporary restraining order and a temporary or interlocutory injunction. Said affidavit does not set out any facts tending to establish that plaintiff RCA is threatened with irreparable injury of a type which a court of equity may afford protection against, as a proximate result of the effectiveness of the Commission's Order on and after November 20, 1950, but rather argues matters which were the subject of consideration and decision by the Commission on the basis of the record of the proceedings before the Commission leading to the issuance of said Order. Plaintiff RCA participated fully in these proceedings, was afforded an opportunity to, and did present testimony on all matters pertinent to a determination by the Commission as to whether the public interest would be served by: (1) the adoption of the dot sequential system proposed by RCA, or (2) the field sequential system or (3) any other system proposed in said proceedings, or (4) by a determination that no color television system should be adopted in commercial broadcasting standards. In fact, RCA presented eight witnesses in its behalf in the extensive hearings before the Commission. The names of said witnesses and the transcript page references to their testimony appear as Exhibit B to the First Report of the Commission (Complaint, Exhibit B, pp. B. 98-101). RCA was thus afforded a full opportunity in the proceedings before the Commission to present in its behalf the testimony of any person, including C. B. Jolliffe.

5. The matters set out in paragraphs 8-12, 16-91, 103-158 of the affidavit of C. B. Jolliffe are arguments on matters of fact and policy as to which RCA had a full opportunity to present testimony and proposed findings and conclusions before the Commission, and as to which the Commission made determinations on the basis of the record before it.

6. The matters set out in paragraphs 14, 15, 92-98 of the affidavit of C. B. Jolliffe relate to allegations set out in paragraphs 70-74, and 75(g) of the plaintiff's complaint that a staff engineer of the Commission should not have



[fol. 1160] been permitted to continue in the proceeding after said engineer offered in evidence on the record a device usable with the CBS system. The matters set out by C. B. Jolliffe do not disclose any support for the relevant allegations of the complaint, and these allegations make no substantial claim of legal error by the Commission. The record of the proceedings before the Commission discloses that at no time during the pendency of the proceedings before the Commission did RCA object to the further participation of Mr. Edward Chapin after he introduced in evidence the device which he invented in the course of his duties as Chief of the Commission's Laboratory Division, and the rights to which he assigned to the United States Government. It may be noted that although C. B. Jolliffe states in paragraph 95 of his affidavit as RCA states in paragraph 70 of its Complaint that the device of Mr. Chapin is usable only in the CBS system, the record discloses that Dr. George H. Brown of the RCA Laboratories, testified that the device was usable in other connections, including possible use with the RCA dot sequential system. (R. 7598, 7599, 10757.) The only objection made by RCA on the record was to "putting the development in these proceedings" (R. 5980-5983), and this very objection was characterized by RCA counsel who made it; Mr. McDaniel, as "a matter of appearance more than anything else" (R. 5982). Neither at that time nor at any time thereafter was any objection made by RCA as to the continued participation of Mr. Chapin in the proceedings, although thereafter RCA filed Proposed Findings on June 27, 1950 (R. 15748-15838), Reply to Proposed Findings, on July 10, 1950 (R. 15960-16162), and Comments, on September 29, 1950 (R. 16493-16629), after the issuance of the Commission's First Report. The matters set out in paragraphs 96-98 of the Affidavit of C. B. Jolliffe with respect to the testimony of Chapin for the purpose of showing that he was "predisposed in favor of the CBS system" are argumentative in nature and do not disclose any basis for a claim of bias, even if one had been timely made by RCA. In fact, Chapin was available for cross-examination and was cross-examined by RCA as fully as it desired with respect to the basis for any testimony given by him. (R. 10621-10656, 10669-10671, 10653, 11657-8.)

[fol. 1161] 7. The statements set out in paragraphs 13 and 94 of the affidavit of C. B. Jolliffe with respect to the

number of engineers on the Commission and the dependence of the Commission on industry engineers and staff engineers for technical advice are argumentative with respect to the scheme of regulation and the procedures which have been established by Congress in the communications field. Moreover, the statement in paragraph 13 of the affidavit of C. B. Jolliffe that the two reports of the Commission are based expressly on engineering grounds overlooks the fact that all seven Commissioners unanimously joined in all the technical findings in the Commission's First Report, and in the conclusions based on those findings that the dot sequential system was unsatisfactory and that the field sequential system, in the state of development disclosed by the record, is a satisfactory system.

8. The statements set out in paragraphs 99-102 of the affidavit of C. B. Jolliffe, with respect to the Condon Committee report relate to matters which are outside the record of the proceedings before the Commission. Paragraph 101 discloses that the analysis set out in this report "was based on the testimony given before the Commission during the hearing, the demonstrations before the Commission and certain other demonstrations and tests." It is obvious that a judicial determination as to the reasonableness of the Commission's determination on the record before it cannot be based on matters outside of that record and off the record opinions of others with respect to the evidence which is contained in the record.

9. The foregoing analysis of the Affidavit of C. B. Jolliffe reveals that it makes no showing whatsoever of any kind of irreparable injury to the plaintiff RCA threatened by the effectiveness of the Commission's Order on November 20, 1950. On its face it discloses that (par. 7) "The purpose of this affidavit is to set forth the basic facts and established principles which show that the Order is contrary to the public interest and to set forth the necessary effect of the Order upon the industry and upon research and development." In offering this affidavit of opinions of fact and policy and other matters which are not in [fol. 1162] the record of the proceedings before the Commission, plaintiffs are in effect seeking a trial *de novo* of the Commission's Order on testimony which was not before it, in review proceedings by this Court, whose inquiry

is limited to review of the evidence before the Commission. *National Broadcasting Company v. United States*, 319 U. S. 190, 227.

## II. *Analysis of Affidavit of Walter A. Buck*

10. I have read the affidavit of Walter A. Buck, dated November 8, 1950, made in support of plaintiffs' motions for a temporary or interlocutory injunction and a temporary restraining order. This affidavit, to the extent that it refrains from re-arguing the merits of the proceedings before the Commission discloses very clearly that the apprehended effect of the Commission's Order depends upon the public's reaction to that Order and to the advertising campaigns of the industry, as well as upon the business judgments which RCA has made and will make in the future.

11. The proceeding before the Commission on the color television issues was instituted by a Notice of Further Proposed Rule Making (Exhibit A of Complaint) released July 11, 1949. Since that date, RCA, as a participant in the proceedings in which it proposed its own color television system, has been aware of the other systems proposed, including the CBS system. If it made plans, in the capacity of a television receiver manufacturer, it should have taken cognizance of the possibility that a system other than its own might be adopted. It now claims that it did not do so, and seeks equitable relief on that basis.

2. The affidavit of Walter A. Buck also clearly reveals that any injury which RCA receives as a manufacturer of receiver equipment depends upon market conditions determined by other factors than the Commission's Order. The effective determinant is the choice made by the public. If the public continues to buy the present type of receiver, RCA is not injured. If the public buys adapters and converters made by other manufacturers, RCA's loss will be due to a competitive disadvantage occasioned by the [fol. 1163] public's choice and its refusal to accede to that choice. The freedom of choice of the public and the opportunity of all manufacturers and sellers of television sets to influence that choice is reflected in the attached photostatic copies of newspaper advertisements by manufacturers and retailers of television receivers. These photostats are true and correct copies of newspaper ad-



vertisements which I have personally read and cut out of the newspapers in which they appeared. They illustrate the freedom of manufacturers and retailers to build and sell receivers of the present type, and to influence the public in its choice. That such influence is used is a convincing demonstration that the matter rests in the hands of the public. The affidavit of Walter A. Buck contains only surmise as to what the public's choice will be. There is no factual showing that the public will not continue to buy RCA receivers. If it does not so continue, any resulting injury will be due to the play of competitive forces. This speculative anticipation of injury is not a showing of substantial threatened legal injury which is the direct result of the Commission's Order.

### III. *Analysis of Affidavit of John H. MacDonald*

13. I have read the affidavit of John H. MacDonald, dated November 8, 1950, made in support of plaintiffs' motion for a temporary or interlocutory injunction, and for a temporary restraining order. This affidavit is also largely argumentative in nature with respect to the public interest in the adoption of one of the color television systems proposed to the Commission. To that extent, it is argumentative of the merits, and does not state facts showing irreparable injury. Nor are any facts as to actual injury recited in this affidavit. Such speculative injury as is claimed in the affidavit will not be a direct result of the Commission's Order of October 10, 1950, but will be a result of the public's choice or a competitive disadvantage vis-a-vis other media of advertising. This is not the type of injury which can support either NBC's standing as a party plaintiff or the grant of a temporary restraining order or interlocutory injunction. The claimed fact that NBC has based its future plans on the expectation that a compatible color television system would be adopted is merely a statement of a business judgment made in the [fol. 1164] face of the proceedings before the Commission, at which other systems were proposed. But expectations as to the future cannot constitute the basis for a showing of presently threatened irreparable injury. There is no statement in the affidavit, and none could be reliably made, that the persons who now own sets will not adapt them

if NBC broadcasts in color. Again there is only a guess that the audience will be depleted.

14. Nor is there any requirement in the Commission's Order that NBC or any other licensee broadcast color programs. The assumption made by the affidavit that NBC will lose its television licenses if it fails to broadcast color programs is sheer speculation, and is made with complete disregard of the fact that the Order of October 10, 1950 contains no requirement that any television broadcast station broadcast in color and the further fact that another rule making proceeding, at which NBC could participate, would be necessary before minimum hours for broadcasting in color could be prescribed. It is important to note in this respect that when, in 1941, the Commission first authorized commercial broadcast television transmission, it simultaneously prescribed minimum hours of operation. This has not been done in connection with the adoption of permissive standards for color transmissions.

15. If NBC cannot broadcast in color under the RCA dot sequential system, this has been the case since 1941 when commercial standards for television broadcasting were first instituted. NBC can broadcast on the basis of any system authorized by its license, and the Commission's Rules and Standards. If it cannot broadcast on any other system it desires to, that is the effect of the Communications Act of 1934, particularly Section 301 thereof, 47 U. S. C. Sec. 301.

16. In summation, the claims made in the affidavit of John H. MacDonald on behalf of NBC show no injury, and speculate as to injury flowing from the free action of the public, other television licensees and NBC itself. Such injury is not a legal injury flowing directly from the Commission's Order.

[fol. 1165] IV. *Analysis of Affidavit of Walter M. Norton*

17. I have also read the affidavit of Walter M. Norton, dated November 8, 1950, made in support of plaintiff's motion for a temporary or interlocutory injunction and for a temporary restraining order. This affidavit states no facts within the knowledge of the affiant showing any injury whatsoever to RCA Victor Distributing Corporation proximately threatened by the promulgation of the Commission's Order of October 10, 1950. The allegations



of injury made in the affidavit of Walter M. Norton are merely speculative, and do not recite a single example of threatened actual injury. They are comprised almost entirely of hearsay reports from unspecified persons. The affidavit, instead of reciting factual irreparable injury, speculates as to the future on the basis of hearsay and the affiant's guesses as to the choice which the public will make. In so far as the affidavit may be considered to show any injury, this injury will result from the free forces of competition and the reluctance of RCA Victor to meet the public's preferences, if these do not coincide with the judgments of RCA. Such speculative anticipation of injury flowing from sources other than the direct effect of the Commission's Order itself is not legal injury and is so indirect and consequential that RCA Victor has no standing to maintain this action on the basis of such claimed injury. If this is so, it clearly is not such irreparable legal injury as will support the grant of a temporary restraining order or interlocutory injunction.

18. The photostatic copies of newspaper advertisements by manufacturers and retailers of television receivers, which are attached hereto, clearly show that any possible increase or decrease in the sale of television receivers is dependent upon the free choice of the public, made on the basis of its knowledge of the Commission's decision and such information as manufacturers, sellers of television sets, and others provide.

[fol. 1166]

#### V. Conclusion

19. The affidavits in support of plaintiffs' motions for a temporary restraining order or a temporary or interlocutory injunction make out no showing of immediately threatened substantial injury to any present interest entitled to equitable protection, and the grant of an injunction may result in injury to the public interest as found by the Commission in the exercise of its statutory authority under the Communications Act of 1934, 47 U.S.C. § 151 et seq., after a full hearing, in comprehensive findings and conclusions based on the record of that hearing.

(S.) Max Goldman.

Sworn to before me this 11th day of November, 1950,  
(S.) Lola E. McElroy, Notary Public. My Commission expires Sept. 13, 1951:

*Acknowledgment of Service*

Service of the foregoing affidavit is hereby acknowledged  
this 11th day of November, 1950.

(S.) Andrew E. Hamilton, for Kirkland, Fleming,  
Martin, Green, and Ellis, Attorneys for Plaintiffs.

George L. Sigel, for Arvey, Hodes & Mantynband,  
11/13/50.

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(Here follows 4 Photolithographs, side folios 1167, 1168,  
1169, 1170-1265.)

Page 764A

**Exhibit Not Reproducible**



# Dynamic's answer to the TV Color Question

As one of America's leading television retailers, with more than 100,000 satisfied customers on our books, and with a strong sense of obligation and responsibility to the public we serve, we take this means of stating our position on the TV color question.

The question uppermost in the minds of most people is: "Will my television set be obsolete when color comes?" Our answer is a positive and emphatic "NO!"

It is Dynamic's firm and considered opinion, based on our own careful analysis and on the judgment of practically every responsible leader in the television industry, that the vast majority of television programs will continue to be broadcast in black and white for many years to come.

Furthermore, the set you now own or intend to buy will receive color, if you so desire, through the use of color converters.

There has been much talk and speculation about the cost of color converters and adapters. Dynamic takes the guesswork out of the color question with this unqualified guarantee to anyone who is thinking of buying a television set at Dynamic Stores:—

## DYNAMIC'S UNQUALIFIED OFFER!

### BUY YOUR TELEVISION SET NOW!

- DYNAMIC guarantees to furnish you with a color converter and/or adapter as required, when they are available, at a price of **\$49.50 OR LESS!**
- This guarantee will be given to you in writing. It applies to all the leading brands of television which we sell in our fifteen stores. These respected brands are listed below.

**DYNAMIC STORES** feature these leading, nationally famous brands of television sets:—

ADMIRAL • ARSLEY • BENDIX • CAPENARY  
DeMONT • EMERSON • FREED-EISEMANN  
GENERAL ELECTRIC • HALLICRAFTERS  
KAYE-HALBERT • MAJESTIC • MOTOROLA  
OLYMPIC • PHILCO • RCA VICTOR • SHAW  
SENTINEL • STROMBERG-CARLSON • ZENITH

**TAKE 65 WEEKS TO PAY**

### ENJOY TELEVISION NOW!

By buying one of these sets of dollars worth of entertainment in the comfort of your own home every day every night. Great shows, thrilling adventures, news, music, movies, variety, comedy, sports, and more. Entertainment for every member of the family at a cost so phenomenally low when compared to other forms of entertainment that you really cannot imagine your family of its enjoyment. With Dynamic's guarantee that your set can be converted to color—there is no reason to turn into a moment longer. Visit your Dynamic store today.



REMEMBER — THE 10% EXCISE TAX ON TV BECOMES EFFECTIVE NOV. 1st

**FREE HOME DEMONSTRATION**

For an absolutely free home demonstration of any of the famous television brands listed, call—

**Sterling 0255**

15 GREAT DYNAMIC STORES

In Wash., D. C. — New York — New Jersey — Connecticut

IN WASHINGTON, D. C.,

**1300 G. STREET N. W.**

CORNER 13th STREET

Washington's Music Corner for Over 48 Years

Washington Post, October 25, 1950

# NOW IS THE RIGHT TIME TO BUY TELEVISION

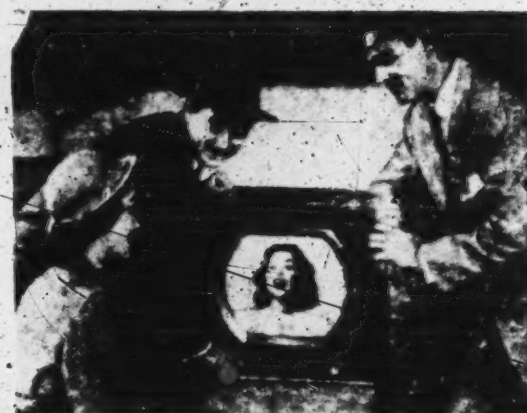
OWN A  
**Motorola**  
AND YOU KNOW YOU  
OWN THE BEST

Motorola, leader in television, explains why you should not put off the pleasure of owning television!



Today's TV sets—outstanding performers. You can't make a mistake by buying the 1951 models now on sale. After all, television is no new "gadget." It has been under constant development for the past twenty-five years. The world's foremost scientists have worked

to make it perfect. Today's best sets are trouble-free and easy to operate. Pictures are brilliantly clear, sharp and steady. Never before has so little money bought so much wholesome entertainment for all your family to enjoy, where you can really relax—in your home.



What about color TV? The sets you buy today can be converted to receive programs from color stations. You can decide later whether you want to make this conversion when you think there are enough color programs telecast in your community. Meanwhile, you should not miss today's fine programs. And remember that for years to come, the best television entertainment will be only in black and white.



Today's values. TV prices have been drastically reduced each year. Today's higher quality large screen sets cost half as much as two years ago. Television is today's greatest entertainment value! News, drama, comedy, music, sports—Television is your ticket to them all.



Motorola's leadership in cabinet design is recognized with the 1950 Fashion Academy Gold Medal Award. Typical example of Motorola supremacy is this Console Model 1963. Clear, steady 15" picture, only 2 simple controls, built in Antenna, price only \$429.95. View it at your dealer's, along with other beautiful Motorola models from \$199.95 to \$450.00.

Don't wait a day longer—arrange for a Motorola demonstration in your home NOW!



# Motorola

TELEVISION



HERE IS AN  
IMPORTANT  
MESSAGE  
FROM

Phillip's

**ALL TV BUYERS  
Ought To Know This...**

**10% TAX ON ALL TV SETS**  
becomes effective soon!

As one of Washington's largest television retailers, we consider it our duty to inform you of the facts in headline type. You may or may not have noticed small newspaper articles stating that the Government is imposing a ten percent tax on all TV sets. We think it only fair to tell you this: If you're buying a TV set within the next few weeks, it will be to your advantage to buy before the new tax becomes law. Of course, if you have not been considering the purchase of TV, don't buy merely to save the tax. We realize that the Government has a very good reason to impose the tax, and we intend to cooperate wholeheartedly once the tax is in effect. This is merely a friendly notice to the public, particularly those who failed to see the news item published recently.

**LIBERAL  
TRADE-IN  
ALLOWANCE**

on this BRAND NEW 1951

**Motorola**

**14" Table  
Model  
TELEVISION**

A beauty in simplicity and compactness, this stunning Motorola is ideal television for any room. Living room, kitchen, den... anywhere in the home, this smartly styled set is instantly ready to bring you hours of pleasant enjoyment. See it now at our nearest PHILLIP'S Store.

**IMMEDIATE  
DELIVERY**

at all 3 stores



Phillip's

**YOURS  
FOR  
THIS  
LOW;  
LOW  
PRICE...**

**\$189 95**

817 H St. N.E.

611 7th STREET N.W.

11th & F Sts. N.W.



[fols. 1266-1420] And afterwards on, to wit, the 14th day of February, 1951, nunc pro tunc, November 14, 1950, there was filed in the Clerk's office of said Court a certain Affidavit of George H. Brown, in words and figures following, to wit:

[fol. 1421] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE H. BROWN

STATE OF NEW JERSEY,

County of Mercer, ss:

George H. Brown, being duly sworn, deposes and says:

1. In the affidavit of Max Goldman, a lawyer for the Federal Communications Commission, which is dated November 11, 1950, and was filed in the above-entitled action in support of the Government's motion to dismiss the Complaint or for summary judgment herein, the following statement is made:

"It may be noted that although C. B. Jolliffe states in paragraph 95 of his affidavit, as RCA states in paragraph 70 of its Complaint that the device of Mr. Chapin is useable only in the CBS system, the record discloses that Dr. George H. Brown, of the RCA Laboratories, testified that the device was useable in other connections including possible use with the RCA dot sequential system. (R. 7598, 7599, 10757)"

[fol. 1422] *Affidavit of George H. Brown*

2. Contrary to Mr. Goldman's statement my testimony in the color hearings was not to the effect that the device of Mr. Chapin is useable in other connections, including possible use with the RCA dot sequential system.

3. My reference to the "Chapin converter", on page 7599 of the transcript in the color hearings, was intended as a facetious remark which I made only because it was Mr. Chapin who was questioning me.

4. The device to which this testimony related is not the Chapin device or any variation thereof. The only thing it has in common with the Chapin device is that the device

to which I referred reacts automatically to an incoming signal. That device, unlike that of Mr. Chapin, has nothing to do with changing line and frame frequencies.

5. My reference to the Chapin device at page 10757 of the transcript in the color hearings, was made in connection with testimony about a possible "universal" receiver. This universal receiver would reproduce color pictures from any color signals, whether transmitted by the RCA, CTI or CBS systems.

6. Use of the Chapin device, or one of a similar nature, would be made desirable by the fact that the receiver was intended to operate on CBS signals, and for this reason only. Such a device would have no place in a color receiver designed to work on the RCA and CTI systems only.

7. I agree completely with the statements by Dr. Jolliffe in paragraph 95 of his affidavit of November 8, 1950, and filed in the above-entitled proceedings, to the effect that the Chapin device is usable only with the CBS system.

(S.) George H. Brown.

Sworn and subscribed to before me this 13th day of November, 1950. (S.) Louis J. Rieger, Notary Public, Mercer County, New Jersey. My Commission expires July 9, 1952. (Notarial Seal.)

[fol. 1423] And on the same day, to wit, the 14th day of February, 1951, nunc pro tunc, November 14, 1950, there were filed in the Clerk's office of said Court certain affidavits of Milton Chasin, Frank Perloff, William Blank and Harry Lefkowitz, in words and figures following, to wit:

[fol. 1424] IN THE UNITED STATES DISTRICT  
COURT

[Title omitted]

#### AFFIDAVIT OF MILTON CHASIN

STATE OF NEW YORK,  
County of New York, ss:

Milton Chasin, being duly sworn, deposes and says:

1. I am President and Treasurer of Bedford Radio Sales and Service, Inc. (hereinafter called "Bedford") whose

principal office is located at 1619 Bedford Avenue, Brooklyn, New York. I am familiar with the sale of television receivers at the retail level.

2. Bedford is engaged and for the past four years has been engaged in the sale to the public of television receivers and other appliances.

3. Bedford has 7 retail stores located throughout the New York Metropolitan Area, presently employs approximately 450 people and its gross sales exceed ten million dollars per year.

4. Bedford sells all the leading makes of television receivers including RCA, Admiral, Dumont, General Electric and Emerson.

[fol. 1425] 5. Since the public announcement of the order of the Federal Communications Commission adopting the CBS incompatible color system, Bedford's volume of orders for television receivers has been substantially reduced to the extent that at present its sales of television receivers are 50% below the volume prior to its announcement.

6. From statements and inquiries received from prospective purchasers, it is evident that the falling off of television receiver sales has been caused by the publication of the order of the Federal Communications Commission and by the public pronouncements of the Columbia Broadcasting System, Inc., promising an incompatible color television service.

7. Many of Bedford's customers have stated that they will not purchase a television receiver at the present time because of the confusion surrounding the availability of color programs.

8. The imminence of the effective date of the Order of the Federal Communications Commission was felt in the sale of television receivers on November 9, November 10 and November 11th when Bedford's sales fell off very sharply. In my opinion if the Commission's Order is put into operation, it will continue to depress the sales of present television receivers.

(S.) Milton Chasin.

Sworn to before me this 13th day of November, 1950. (S.) Adolph Fox, Notary Public, State of New York, No. 03-638500. Commission expires March 30, 1952. (Notarial Seal.)



[fol. 1426] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF HARRY LEFKOWITZ

STATE OF NEW YORK,  
County of New York, ss:

Harry Lefkowitz, being duly sworn, deposes and says:

1. I am President of The Cortlandt Co. Department Store, Inc. (hereinafter called Cortlandt) located at 243 Broadway, New York, N. Y. I am familiar with the sale of television receivers at the retail level.

2. Cortlandt is engaged and for the past 5 years has been engaged in the sale to the public of television receivers and other major appliances.

3. Cortlandt presently employs approximately 50 people and its gross sales exceed one million dollars per year.

4. Cortlandt sells all the leading makes of television receivers including RCA, Dumont, Admiral, Philco, Emerson and General Electric.

5. Since the public announcement of the order of the Federal Communications Commission adopting the CBS color system, Cortlandt's sales of television receivers have substantially fallen off.

[fol. 1427] 6. During the period October 12, 1950 to October 25, 1950 the sales of television receivers were 70% below the sales effected during the comparable period in September, 1950. During the period October 25, 1950 to November 1, 1950 there was an increase in the sale of television receivers due to the impending Excise Tax. However, from November 1, 1950 down to the present time, Cortlandt's sales of television receivers has fallen off to the extent of 80%.

7. From statements and inquiries received from those prospective purchasers who came into our store, it is evident that the falling off of television receiver sales has been caused by the publication of the order of the Federal Communications Commission and by the various pronouncements of the CBS, Inc. in the newspapers.

8. I have made inquiry of people who have come into our store as to whether or not they had a television set and inquired of those who had responded that they did not have a receiver why they were not purchasing one at pres-

ent. Most of the people to whom I put this inquiry responded that they were postponing their purchase of a television receiver until they were assured that the receiver they purchased would receive all programs broadcasted whether in black and white or in color.

9. With the approach of the effective date of the order of the Federal Communications Commission, Cortlandt's sale of television receivers has sharply declined and in my opinion if the Commission's order becomes effective, the sales of present television receivers will continue to decline.

Harry Lefkowitz.

Sworn to before me this 13th day of November, 1950

Adolph Fox, Notary Public State of New York  
No. 03-6368500 Commission expires March 30, 1952  
(Notarial Seal)

[fol. 1428] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

#### AFFIDAVIT OF WILLIAM BLANK

STATE OF NEW YORK,

County of New York, ss:

WILLIAM BLANK, being duly sworn, deposes and says:

1. I am President of Baim and Blank, Inc. whose address is 4616 Thirteenth Avenue, Brooklyn, New York. I am familiar with the sale of television receivers at the retail level.

2. Baim and Blank, Inc. have been in the business of retailing major appliances since 1926 and have sold television receivers since 1940. It presently handles all leading makes of television receivers including, RCA Victor, Dumont, Admiral, Philco, Motorola, Zenith and Magnavox. It has in its employ approximately 41 people.

3. Since the public announcement of the order of the Federal Communications Commission adopting the Columbia Broadcasting System color system, the sales of television receivers by Baim and Blank, Inc. have fallen off.  
[fol. 1429] 4. Since on or about November 1, 1950 the sales of television receivers have fallen off to the extent of